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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,146	09/08/2003	Xavier Blin	05725.1239-00	1368
22852 7590 01/31/2011 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER ROGERS, JAMES WILLIAM	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 01/31/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,146

Applicant(s)

BLIN ET AL.

Examiner

JAMES W. ROGERS

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/01/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7, 13, 15, 18, 20, 23, 26, 27, 33, 39, 41, 44, 46, 56, 59, 83, 85, 115, 119 and 120 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1,7-13,15-18,20-23,26,27,33-39,41-44,46-56,59,83-85,115,119 and 120.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/01/2010 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,7-13,15-18,20-23,26-27,33-39,41-44,46-56,59,83-85,115 and 119-120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnaud et al. (US 5,961,998), for the reasons set forth in the previous office action filed 04/29/2008.

Claims 1,7-13,15-18,20-23,26-27,33-39,41-44,46-56,59,83-85,115 and 119-120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnaud et al. (US 5,961,998) in view of Willemin et al. (US 6,592,855 B1), for the reasons set forth in the previous office action filed 04/29/2008.

Response to Amendment

The declaration under 37 CFR 1.132 filed 10/05/2009 is insufficient to overcome the rejection of claims 1,7-13,15-18,20-23,26-27,33-39,41-44,46-56,83-85,115 and 119-120 based upon 35 U.S.C. 103(a) as being unpatentable over Arnaud et al. (US

5,961,998) as set forth in the last Office action. First the examiner notes that the declaration does not actually state that the results presented are unexpected, instead the examples are said to demonstrate unpredictability in the art based upon the differences in the exemplified compositions. However finding the optimum type of oils in order to achieve a non greasy and hard lipstick is not considered unpredictable since a relatively hard and non-greasy lipstick would be a desirable property for such a cosmetic and this property would be adjusted by known selection processes for the various constituent ingredients of that lipstick. Lastly the examiner notes that objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support. The examples within applicant's declaration are all drawn to a lipstick composition that is much narrower in scope than what is actually claimed. For instance composition 1 contains one specific commercially sourced low viscosity phenyl siloxane with a specific structure and MW whereas the low viscosity oil of claim 1 is any phenylsiloxane which has a viscosity lower than 500 cst. Additionally composition 1 contains one specific commercially sourced high viscosity phenyl siloxane of a specific structure and MW wherein the high viscosity oil of claim 1 can be any phenylsiloxane which has a viscosity greater than 500 cst. Additional ingredients within the lipstick composition not required in the claimed composition include microcrystalline cellulose, alkyl dimethicone, Microwax from paramelt and mixtures of glycerides.

Response to Arguments

Applicant's arguments filed 10/05/2009 have been fully considered but they are not persuasive. Applicants assert the declaration shows that assuming compositions with similar ingredients will exhibit the same properties is incorrect.

As noted in the response above finding the optimum type of oils in order to achieve a non greasy and hard lipstick is not considered unpredictable. Furthermore as noted in the response above the objective evidence of nonobviousness is not commensurate in scope with the claims which the evidence is offered to support.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 9:30-6:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/J. W. R./

Examiner, Art Unit 1618

/Michael G. Hartley/

Supervisory Patent Examiner, Art Unit 1618